

**REMARKS**

Pending Claims 1-10 and 12-24 have been rejected, which rejection is respectfully traversed for the reasons presented below. Claim 11 has been canceled, without prejudice.

**Information Disclosure Statement**

Another Information Disclosure Statement is filed herewith, including a proper citation to the printout of the webpage previously submitted, in a separate paper.

**Drawings**

1. The “alternate towing apparatus” of Claim 19 and the “frame fork attachment” of Claim 21 are, in fact, shown in the application. Thus, frame fork attachments 100 as recited in Claim 21 are shown in FIGURE 12 (see also page 11, line 2 of the application as originally filed), which also serve as the “alternate towing apparatus” of Claim 19.

2.-3. FIGURES 13-16 have been revised to comply with 37 C.F.R. 1.83 and the proposed new figures are attached hereto.

**Specification**

1. FIGURES 13-16 and the corresponding description of the details of the pin and bushing assembly have been objected to as new matter. This objection is respectfully traversed, in light of the attached Declaration of Jean Paul Craze, the inventor, stating that in light of the

disclosure of the application as originally filed, including the 2<sup>nd</sup> full paragraph on page 6, that a person of ordinary skill in the art would have necessarily understood that the design shown in FIGURES 13-16, as well as the corresponding description, had been disclosed (1/5/07 Craze Declaration, ¶ 2).

### **Claim Objection**

1. The Examiner was correct in assuming that Claim 12 should properly depend from Claim 9, and this claim amendment has been formalized, above.

### **Claim Rejections – 35 USC §112**

1.1-1.2 The Examiner indicates that the terms “rapidly” and “quickly” are indefinite. Applicant respectfully traverses this rejection. These terms have now been specifically defined (see specification revision, above), consistent with the manner in which they were originally used in the application as originally filed, as explained in the attached July 26, 2006 Declaration of Mr. Craze, previously submitted (see page 2, lines 8-10). The fact that these terms involve matters of degree does not render them indefinite; rather, as the Federal Circuit has explained, the question is whether one of ordinary skill in the art would understand what is claimed:

Definiteness problems often arise when words of degree are used in a claim. That some claim language may not be precise, however, does not automatically render a claim invalid.” *Seattle Box Co., Inc. v. Indus. Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984). **The question becomes whether one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification.** *Id.* BJ Services argues that the term “about” is intended to encompass the range of experimental error that occurs in any measurement and that one of skill in the art would

readily understand the range that "about 0.06" was intended to include.... We conclude that substantial evidence supports the jury's finding that the '855 patent was not invalid for indefiniteness or lack of enablement.

*BJ Servs. Co. v. Halliburton Energy Servs.*, 338 F.3d 1368, 1372-1373 (Fed. Cir. 2003)

(emphasis added). That some degree of experimentation is required is not the test:

Thus, in cases subsequent to *In re Jolly* that have involved issued patents, this court has held claims definite even when some degree of experimentation was necessary, as long as the claims otherwise met the enablement requirement. *See, e.g., Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus.*, 145 F.3d 1303, 1312, 46 U.S.P.Q.2D (BNA) 1752, 1759 (Fed. Cir. 1998) (holding that the recitation of a quantitative drop rod test rendered definite a claim limitation); W.L. Gore & Assocs., 721 F.2d at 1557, 220 U.S.P.Q. (BNA) at 316. The government's expert admitted that the "period sufficient" can be ascertained by conducting activity checks. **Therefore, a person of ordinary skill in the art would understand the scope of that claim limitation, which is all that paragraph 2 of section 112 requires.**

*Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1380 (Fed. Cir. 2001) (emphasis added). *See also Cordis Corp. v. Medtronic AVE Inc.*, 339 F.3d 1352, 1360 (Fed. Cir. 2003)

("The patents do not set out any numerical standards by which to determine whether the thickness of the wall surface is 'substantially uniform.' The term 'substantially,' as used in this context, denotes approximation. Thus, the walls must be of largely or approximately uniform thickness."). Here, there is evidence from the inventor, a person of at least ordinary skill in the art, as to how to interpret the terms "quickly" and "rapidly" in a way that clearly differentiates from the prior art, such as Nolasco, whose wheel lift cannot be disassembled "in a matter of

minutes" (i.e., a few minutes).

### **Claim Rejections – 35 USC § 102**

1.1-1.4        The anticipation rejection of Claims 1-6, 8-10, 12-13 and 15-18 is respectfully traversed. The Examiner finds that Nolasco is capable of "rapid" or "quick" disassembly" but Applicants respectfully traverse this finding. As those terms are defined, Nolasco is not capable of this, as previously explained (see 7/26/06 Rule 115 Amendment, at 9-10, and 7/26/06 Craze Declaration, at 1-2). As further explained in the January 5, 2007 Craze Declaration attached hereto (¶ 3), the following steps are required for disassembly of the Nolasco wheel lifts (referring to FIGURE 3):

- (1)      removal of nuts and corresponding plates 35, 36 and springs 31, 32;
- (2)      removal of cover plates 12a and 12b by removing pin 12c and all ten corresponding bolts as shown
- (3)      removal of the pin between 12e and 12d so that cylinders 27, 28 and the corresponding hoses may be removed, to allow appropriate room for an alternate fork attachment (see, e.g., FIGURE 12 of the instant application).

As Mr. Craze explains, this process may only be performed in the field in a relatively slow and cumbersome manner, likely taking at least tens of minutes (*id.*). Thus, it is clear that the Nolasco wheel lifts cannot be "quickly" or "rapidly" disassembled in the field, and it is not apparent how

to modify Nolasco to achieve this capability (*id.*).

Additionally, Applicant has presented secondary indicia of nonobviousness, namely, detailed and extensive evidence that Applicant's invention has been the subject of unauthorized copying by the Nolasco owner, Weldbuilt.<sup>1</sup>

**Claim Rejections – 35 USC § 103**

1.1, 2.1 and 3.1      The Examiner finds the claims obvious in light of Nolasco and Kiefer (Claim 7), Nolasco (Claim 14), and Nolasco and Peterson (Claims 19-24). However, each of these rejections are respectfully traversed given the deficiencies in Nolasco discussed above, as well as given the deficiencies of Kiefer and Peterson as previously addressed.

Applicant also notes that Kiefer (USPN 5,575,606) fails to disclose the use of a powering mechanism for its L-arms. Nor do Peterson or Purkott remedy these deficiencies in Nolasco and Kiefer.

If the next written communication is intended to be other than a notice of allowance, Applicant requests that the undersigned be contacted prior to the issuance of such communication.

Respectfully submitted,

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<sup>1</sup> The inventor explained that the assignee of the Nolasco patent, Weldbuilt, appropriated and displayed the present invention (7/26/06 Craze Dec., ¶ 1). Mr. Craze was personally familiar with the Weldbuilt device, as Weldbuilt wished to display a unit which was capable of rapid disassembly, as its own design was not (*id.*, ¶ 1).

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